

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JOHN P SIPE
Claimant

APPEAL NO. 08A-UI-11409-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ART PAPE TRANSFER INC
Employer

OC: 11/09/08 R: 12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Art Pape Transfer (Pape), filed an appeal from a decision dated December 5, 2008, reference 02. The decision allowed benefits to the claimant, John Sipe. After due notice was issued, a hearing was held by telephone conference call on December 17, 2008. The claimant participated on his own behalf. The employer participated by Safety Director Tom Cloos.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

John Sipe was employed by Pape from March 1, 1998 until October 24, 2008 as a full-time over-the-road truck driver. He received a copy of the employee manual at the time of hire and it set out the disciplinary policy regarding avoidable accidents, or accidents for which the driver is found at fault. Points are given for each accident depending on whether the driver was determined to be at fault. Two or more "at fault" accidents in an 18-month period will result on an additional point being given. All accidents must be reported immediately to enable the employer to investigate at once. If dispatch is not available, Safety Director Tom Cloos may be called at any time of the day. Six points in an 18-month period may result in discharge.

The claimant was involved in "backing accidents" where he struck stationary objects in April, May and September 2007, and May 2008. The employer did not discharge him even though he had accumulated more than six points because of the length of his employment. Another backing accident on October 13, 2008, was reviewed with Mr. Sipe by Mr. Cloos and the employer told him he was getting too many accidents.

On October 24, 2008, the claimant had parked in a truck stop around 8:00 p.m. to eat and sleep. He did a check of his truck at 3:00 a.m. as he was preparing to leave to deliver his load. As a result of that check he discovered damage to the truck but did not report it until 7:00 a.m. when he called dispatch. He arrived at the terminal after delivering his load and Mr. Cloos and

Owner Art Pape examined the truck. It was not able to be determined if the claimant had struck another object or something had hit him. The fact he delayed notifying the employer meant no investigation could be done.

If the claimant had called Mr. Cloos as required, he would have been instructed to call the police so an accident scene report could be filled out, and contact with the truck stop would have been made to determine if anyone had seen anything about the accident. Since the reporting was delayed by four hours the employer was unable to determine if the claimant had another at-fault accident but he was discharged for failing to report the accident immediately.

The claimant stated the damage had to have occurred while he was in the truck stop because he would have felt it had it occurred while he was in the sleeper. He did not contact the employer when he discovered the damage because it had occurred several hours earlier.

John Sipe has received unemployment benefits since filing a claim with an effective date of November 9, 2008.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant was not discharged when he had accumulated six points for at-fault accidents because the employer took into consideration his long tenure and elected to continue his

employment. All of the accidents for which he was found at fault involved his vehicle coming into contact with stationary objects. He was advised he was getting close to being discharged because of these accidents and he would have to be more careful in the future.

He was discharged for a final incident of damage to his truck. Because he did not follow the rule and report the damage as soon as he discovered it, the employer was unable to do a timely investigation and make a determination as to the cause. This was a final incident of misconduct which precipitated the decision to discharge. Whether or not the employer could have made a successful determination as to the cause, and who was responsible, is not at issue. By failing to timely report the damage he deprived the employer of the opportunity to conduct any investigation at all. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this states pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of December 5, 2008, reference 02, is reversed. John Sipe is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount,

provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css